REMARKS

In the May 5, 2006 Office Action, the Examiner objected to claim 9 because of a typographical error. Claim 8 was rejected under 35 USC § 112, second paragraph as indefinite. Claims 1-5, 7 and 8 were rejected under 35 USC § 101 as non-statutory. Claims 1-12 were rejected under 35 USC § 103 as unpatentable over U.S. Patent 5,951,694 to Choquier and U.S. Patent 6,226,377 to Donaghue. Claims 1-5 and 7-9 are herein amended. Claims 1-12 remain in the case and are under consideration. The rejections are respectfully traversed below.

Claim Objection

In item 2 on page 2 of the Office Action, claim 9 was objected to because of a typographical error. Claim 9 is herein amended at line 7 to delete the word "amount" and insert the word --among--. It is respectfully requested that the objection to claim 9 be withdrawn in the next Office Action.

Rejection under 35 USC § 112

In item 5 on page 3 of the Office Action, claim 8 was rejected under 35 USC § 112, second paragraph as indefinite because "the preamble recites both ... an apparatus ... and a method" (Office Action, page 3, lines 5-7). Claim 8 is herein amended to recite a "storage medium encoded with a program readable by an information processing device ... when executed ... causing the information processing device to perform a ... method" (Claim 8, lines 1-4). "When a computer program is claimed in a process where the computer is executing the computer program's instructions, Office personnel should treat the claim as a process claim" (MPEP 2106 (IV)(B)(1)(a) Functional Descriptive Material: "Data Structures" Representing Descriptive Material *Per Se* or Computer Programs Representing Computer Listings *Per Se*) Rev. 3, August 2005, p. 2100-13. In this case, the computer (i.e., information processing device) reads and executes the data structure of a computer program causing the information processing device to perform a method. Therefore, claim 8 should be examined as a method claim. It is respectfully requested that the rejection of claim 8 under 35 USC § 112, second paragraph be withdrawn.

Rejections under 35 USC § 101

In item 7 on pages 3-5 of the Office Action, claims 1-5 and 7 were rejected under 35 USC § 101 as non-statutory because the claims recite "a program, per se, which is merely descriptive material" (Office Action, page 3, lines 19-20). The preambles of claims 1-5 and 7 are

herein amended and now directed to a computer readable medium encoded with a computer program when executed by the computer causing the computer to perform a method. In other words, as amended, claims 1-5 and 7 are now directed to "a claimed computer-readable medium encoded with a data structure ... [which] defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized ... is thus statutory" (MPEP 2106 (IV)(B)(1)(a) Functional Descriptive Material: "Data Structures" Representing Descriptive Material *Per Se* or Computer Programs Representing Computer Listings *Per Se*) Rev. 3, August 2005, p. 2100-13. In this case, the "program" recited in claims 1-5 and 7 contains the required computer readable "data structure" executable by the computer to perform a method that provides a useful, concrete and tangible result. Therefore, claims 1-5 and 7 are statutory. It is respectfully requested that the rejection of claims 1-5 and 7 under 35 USC § 101 be withdrawn.

In item 8 on page 5 of the Office Action, claim 8 was rejected under 35 USC § 101 as non-statutory because "the preamble recites both ... an apparatus ... and a method" (Office Action, page 5, lines 1-3). Claim 8 is herein amended to recite a "storage medium encoded with a program readable by an information processing device ... when executed ... causing the information processing device to perform a ... method" (Claim 8, lines 1-4). "When a computer program is claimed in a process where the computer is executing the computer program's instructions, Office personnel should treat the claim as a process claim" (MPEP 2106 (IV)(B)(1)(a) Functional Descriptive Material: "Data Structures" Representing Descriptive Material *Per Se* or Computer Programs Representing Computer Listings *Per Se*) Rev. 3, August 2005, p. 2100-13. In this case, the computer (i.e., information processing device) reads and executes the data structure of a computer program causing the information processing device to perform a method. Therefore, claim 8 should be examined as a method claim. It is respectfully requested that the rejection of claim 8 under 35 USC § 101 be withdrawn.

Request for Examiner Interview

If the rejections based on 35 USC §§ 101 and 112 are not withdrawn, the Examiner is respectfully requested to contact the undersigned by telephone **prior to issuing another Office Action,** to discuss further amendments of the claims in order to avoid such rejections in the next Office Action.

Rejections under 35 USC § 103

In item 11 on pages 6 and 7 of the Office Action, claims 1 and 6-9 were rejected under 35 USC § 103(a) as unpatentable over <u>Choquier</u> in view of <u>Donaghue</u>. The Office Action admitted that <u>Choquier</u> "fails to teach the service servers are grouped depending on quality levels of the rendered services into ... high, low, and intermediate service groups" (Office Action, page 7, lines 3-5). However, the Office Action failed to address the limitation "dividing the service servers to define a plurality of groups of service servers depending on quality levels of rendered services, and an intermediate server group of service servers which offer low level service among the service servers at a normal time" (claim 1, lines 6-9). The Office Action merely alleged that <u>Donaghue</u> "teaches ... the service servers are grouped depending on quality levels of the rendered services into a high, low, and intermediate service groups ... and reassigning servers between the server groups based upon the load and level of service" (Office Action, page 7, lines 6-11). It is important to note that claim 1 does not recite "high, low, and intermediate service groups". Thus, the limitations of claim 1 apparently have been mischaracterized and misinterpreted in the Office Action.

What was cited in <u>Donaghue</u> describes priority levels of incoming calls requiring server service; "when each arriving server 301 becomes available to the facility, the facility offers the arriving server to one priority level after another until one of the priority levels accepts the offered server" (column 8, lines 47-50). "Priority level 1 (311) determines whether the offered server is needed to meet the service level goal of any of its applications. If so, priority level 1 accepts the offered server, and assigns it to one of its applications" (column 8, lines 53-55). <u>Donaghue</u> discloses dividing incoming calls into priority levels. In other words, priority levels of incoming calls are grouped and a given server is offered to service a given call.

It is submitted that **grouping** service **requests** into differing priorities is different from "dividing the service servers to define a plurality of **groups of** service **servers** depending on quality levels of rendered services" (claim 1, lines 6-7, emphasis added). Furthermore <u>Donaghue</u> is silent as to "an intermediate server group of service servers which offer low level service among the service servers at a normal time" (claim 1, lines 7-9). Nothing was cited or found in <u>Choquier</u> and <u>Donaghue</u> either combined together or taken individually, that teaches or suggests the limitations recited on lines 6-9 of claim 1, as quoted above. Nor was anything was cited or found in <u>Choquier</u> and <u>Donaghue</u> that teaches or suggests motivation to combine <u>Donaghue</u> with <u>Choquier</u> to derive the limitations admittedly missing from <u>Choquier</u> and not addressed in the Office Action. For all of the above reasons, claim 1 is allowable.

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Independent claims 6-10 recite "intermediate service servers offering low level service at a normal time" limitations in a manner similar to claim 1. Dependent claims 2-5, 11 and 12 depend from claims 1 and 10. Thus, claims 2-12 distinguish over the applied references for the reasons discussed in regard to claim 1.

CONCLUSION

It is submitted that in <u>Choquier</u> and <u>Donaghue</u> either combined together or considered individually do not teach or suggest the features of the present claimed invention. Thus, it is submitted that claims 1-12 are in condition suitable for allowance. Reconsideration of the claims and an early Notice of Allowance are earnestly solicited.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Finally, if there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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Date: 9/5/06

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